IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 235 of 2004

WITH

COMPANY PETITION No 236 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNRISE TIME PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION Nos. 235, 236 of 2004
MR DHARMESH V SHAH for Petitioner.
MR JITENDRA MALKAN, SR. STANDING COUNSEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 23/02/2005

COMMON ORAL JUDGEMENT

The present Company Petitions are filed for sanctioning the Scheme of Amalgamation of Sunrise Time Private Limited (Transferor Company) with Delta Time Private Limited (Transferee Company) whereby all the assets and liabilities of the Transferor Companies (As defined in the Scheme) would be transferred to the Transferee Company on the terms and conditions as stated in the Scheme of Amalgamation. I have heard learned advocate Mr. Dharmesh Shah appearing for the petitioners. I have considered the contents of the petitions and the annexures attached to the petitions.

2. Earlier, by order dated 11.10.2004 in Company Application No. 357 of 2004, this Court dispensed with the meeting of Equity Shareholders of the Transferor Company as all the Equity Shareholders had given their consents in writing approving the Scheme of Amalgamation. There are no secured or unsecured creditors in the Transferor Company and by an order dated 11.10.2004 passed in Company Application No. 356, this Court has also dispensed with the meeting of Shareholders and all Creditors of the Transferee Company as all the Equity Shareholders and Sole Secured Creditor had given their consents in writing approving the Scheme of Amalgamation.

3. The present petitions were admitted on 06.12.2004 and notice was issued to the Central Government through the Regional Director, Department of Company Affairs. The Notice was also issued to the Official Liquidator in the case of Transferor Company. The notices were also ordered to be published in two Newspapers. Pursuant to the same, affidavits of Mr. Mahendra J. Shah for Transferee Company and Mr. Samir M. Shah for Transferor Company all dated 06.01.2005 were filed confirming the publication of the notice in two Newspapers.

4. In the case of Transferor Company, the Official Liquidator has placed his report dated 10.02.2005 wherein it is stated that the Chartered Accountant appointed for the purpose of scrutinizing and investigating the books of accounts and the affairs of the Company has submitted their report concluding that on the basis of the information received by them and submissions made by the Company and based upon the examination of records and books produced before them, he is of the opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or interest of public. The Report of the Official Liquidator dated 10.02.2005 is on record.

5. A copy of letter dated 16.02.2005 addressed by

the Regional Director, Mumbai to Mr. J.M. Malkan, Senior Central Government Standing Counsel is placed on record by Mr. J.M. Malkan wherein it is stated by the Regional Director that the Scheme of Amalgamation had been examined and accordingly it has been decided to advise to follow the procedure laid down for increase the Authorised Share Capital to meet the shortfall of Rs.49,06,000/- in allotment of share consequent upon Share Exchange Ratio mentioned in the Scheme.

In view of above, it is submitted by Mr. Shah that the Clause 10(E) of Scheme of Amalgamation provides that :-

> Upon coming into effect of this Scheme Clause V of the Memorandum of Association of Transferee Company shall, without any further act, instrument of deed, be and stand altered, modified and amended pursuant to Section - 16, 94 and 394 and other applicable provisions of the Act, in manner set below :
>
> The Authorised Share Capital of the Company is Rs.55,00,000/- (Rupees Fifty Five Lacs) divided into 5,50,000 (Five Lacs Fifty Thousand) Equity Shares of 10/- (Rupees Ten) each.

6. In view of the above, it is further submitted by Mr. Shah, the advocate for the petitioner Companies that the Company agrees to follow the relevant procedure for increase of Authorised Share Capital by paying necessary Stamp Duty and Registration Fees upon the sanctioning the Scheme. And, accordingly, the objection raised by the Regional Director in his report dated 16.02.2005 be treated as satisfied. Even otherwise, this Court has taken the view in number of matters with regard to Single Window Clearance and in view thereof the objection raised by the Regional Director is not sustainable.

7. In the above view of the matter, the Court is of the opinion that the Scheme as proposed and approved deserves to be sanctioned by the Court. The Court, therefore, allow both these petitions and sanction the Scheme of Amalgamation at Annexure - C of the petitions. Reliefs in terms of para 15 of both the Company Petitions No. 235 & 236 are hereby granted.

8. A certified copy of this order be delivered to the Registrar of Companies, Gujarat State within 30 days from the date of receipt of certified copy of this order.

9. The fees of learned Senior Central Government

Standing Counsel Mr. Jitendra Malkan is quantified at Rs.3,000/- in each matter to be paid by the Transferee Company.

10. Both the Company Petitions shall stand disposed-off accordingly.

[K.A. PUJ, J.]

#Savariya#

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